

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**ROBERT H. DeMOSS, JR., by the
conservator of his person and property
Catherine Robette Campbell,**

Plaintiff,

vs.

**CASE NO. 3:09-00633
JUDGE ECHOLS/KNOWLES**

JURY DEMAND

**DILLARD’S, INC., DILLARD
TENNESSEE OPERATING LIMITED
PARTNERSHIP, CONSTRUCTION
DEVELOPERS, INCORPORATED,
JOHN MITCHELL,
WILLIAM HORN,
DAVIS STREET LAND COMPANY OF
TENNESSEE, L.L.C.,
ROBERT WILLIAM TICE, JR.,
BRITTNEY BANISTER,
JOHNATHON HARRIS, and
CATHERINE DALE MILLS,**

Defendants.


REPORT AND RECOMMENDATION

The Court previously entered an Order in this removal case requiring Defendants Dillard’s, Inc., and Dillard Tennessee Operating Limited Partnership to file a Response establishing that the Court has subject matter jurisdiction of this action, in view of the recent addition of a number of non-diverse Defendants. Docket No. 18. Those Defendants have filed their Response (Docket No. 24), which states in relevant part, “Dillard’s [referring to both the

Dillard Defendants] does not contest the lack of subject matter jurisdiction now that diversity has been destroyed.”

In view of the foregoing, the undersigned recommends that this action be DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have ten (10) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within ten (10) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh’g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.


E. Clifton Knowles
United States Magistrate Judge